



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

June 25, 2008

Mr. David Waldo
184 North Summerhaven Drive
Crossville, Tennessee 38555

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 4605

Subject: DIRECTOR'S ORDER NO. WPC08-0095
SHEEP BLUFF ROAD OFF HWY 70
PUTNAM COUNTY, TENNESSEE

Dear Mr. Waldo:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Nashville
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
DAVID WALDO)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
RESPONDENT)	CASE NUMBER WPC08-0095
)	

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the “director” and the “division” respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “commissioner” and the “department” respectively).

II.

David Waldo (hereinafter the “Respondent”) is a resident of Cumberland County, Tennessee, and is the mine operator of a dimension stone mining operation located on Sheep Bluff Rd off Hwy 70 in Putnam County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent at 184 North Summerhaven Drive, Crossville, Tennessee 38555.

JURISDICTION

III

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondent has violated the Act.

V.

T.C.A. §69-3-108 requires a person to obtain a permit from the division prior to the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of

resource value.

VI.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the Tennessee Multi-Sector General Permit for Industrial Activities (hereinafter the “TMSP” or “permit”) may be obtained by submittal of a Notice of Intent (NOI).

VII.

The unnamed tributary to the Falling Water River, referred to herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VIII.

On December 17, 2007, division personnel from the Cookeville Environmental Field Office (CKEFO) conducted a complaint investigation and noted that the Respondent was in the process of removing stone from the site, conducting excavation activities, and placing excavated/mined materials where they could enter waters of the state. There were no Erosion Prevention and Sediment Control (EPSC) measures installed nor had the site been stabilized.

IX.

On December 20, 2007, division personnel continued the complaint investigation at the site and discussed the EPSC measures that needed to be installed with the Respondent. At the time of the inspection, division personnel noted that the Respondent was in the process of constructing roads at the site and placing gravel on haul roads. A subsequent file review determined that the Respondent had not requested nor been issued TMSP coverage for dimension stone mining activities at the site.

The division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the December 17 and 20, 2007, complaint investigations. The Respondent was instructed to stabilize all mined areas and to submit a TMSP application to the division by January 4, 2007, including a Notice of Intent (NOI), a Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee, if further mining activity was to occur.

X.

On January 2, 2008, the Respondent submitted an incomplete TMSP application for the mining of two acres at the site.

XI.

On March 7, 2008, division personnel conducted a follow-up site inspection. Division personnel noted that the Respondent had conducted further unpermitted mining activities, had placed excavated/mined materials where they could enter waters of the state, had not installed any EPSC measures, and had not stabilized the site.

The division issued a Notice of Violation (NOV) to the Respondent for violations noted during the March 7, 2008, site visit. The Respondent was again instructed to stabilize the site, install adequate EPSC measures, and submit a written response to the division by March 14, 2008, describing all site stabilization activities conducted and all EPSC measures installed.

XII.

On March 18, 2008, the Respondent informed the division that mining activities were scheduled to continue at the site and that a complete TMSP application would be submitted.

XIII.

On April 4, 2008, division personnel conducted a follow-up site inspection and noted that no additional mining activities had occurred and that the site remained unstabilized.

XIV.

On May 13, 2008, division personnel conducted a follow-up site inspection and noted that no additional mining activities had occurred and that the site remained unstabilized.

XV.

On June 9, 2008, division personnel conducted a follow-up site inspection and noted that the Respondent had conducted further mining activities, had placed excavated/mined materials where they could enter waters of the state, EPSC measures had not been installed, and the site had not been stabilized. Division personnel estimated the mined area to be approximately 14 acres.

XVI.

On June 11, 2008, the division issued a Notice of Violation to the Respondent for violations noted during the June 9, 2008 site inspection. The Respondent was again instructed to stabilize the site and install adequate EPSC measures. The Respondent was informed that division personnel would conduct a follow-up site inspection on June 25, 2008.

XVII.

During the course of this investigation, the division incurred damages in the amount of FOUR HUNDRED SIXTY DOLLARS AND NINE CENTS (\$460.09).

VIOLATIONS

XVIII.

By discharging materials to waters of the state without coverage under a valid permit, by conducting dimension stone mining activities without a valid permit, and by altering waters of the state with authorization under an ARAP, as described herein, the Respondent has violated T.C.A. Sections §§69-3-108(a)(b) and 69-3-114(b):

T.C.A. §69-3-108(a) states, in part:

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XIX.

By causing a condition of pollution to an unnamed tributary to the Falling Water River, as described herein, the Respondent has violated T.C.A. §69-3-114(a):

§69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XX.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondent.

1. The Respondent shall, within 30 days of receipt of this Order and Assessment, establish adequate EPSC measures and stabilization measures on-site, such that no additional sediment is allowed to leave the site and enter waters of the state. The Respondent shall, within 7 days of completion, submit written documentation and photographic evidence indicating that adequate EPSC and stabilization measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager at the CKEFO at 1221 South Willow Avenue, Cookeville, Tennessee 38506.
2. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
3. If mining activities are to continue, the Respondent shall, within 30 days of receipt of this Order and Assessment, submit a complete application for TMSP coverage under an NPDES permit for storm water discharges associated with dimension stone mining activities at the site to the Division of Water Pollution Control Manager at the CKEFO to the address listed in item 1, above.
4. The Respondent shall, within 30 days of receipt of this Order and Assessment, submit for review and division approval, a Corrective Action Plan (CAP) for the restoration of the impacted segments of the unnamed tributary to the Falling Water River, including sediment removal, stabilization of the banks, and restoration. This CAP shall include, but not be limited to, the manual techniques and activities to be utilized during sediment removal and restoration activities, and a time schedule for the proposed activities. The written approval of the CAP by the division will constitute authorization for the activities described in the approved plan, and no additional ARAP coverage is required. The CAP shall be submitted to the Division of Water Pollution Control Manager at the CKEFO.

Any deficiencies to the CAP shall be corrected by the Respondent within 30 days of notification of those deficiencies and the revised CAP shall be resubmitted to the Water Pollution Control Manager at the CKEFO to the address listed in item 1, above.

5. The Respondent shall, within 15 days of division approval, initiate the activities outlined in the approved CAP and submit notification of initiation to the Water Pollution Control Manager at the CKEFO to the address listed in item 1, above.
6. The Respondent shall, within 60 days of division approval, complete the activities outlined in the approved CAP and submit notification of completion to the Water Pollution Control Manager at the CKEFO to the address listed in item 1, above.
7. The Respondent shall pay a CIVIL PENALTY of ELEVEN THOUSAND DOLLARS (\$11,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this Order and Assessment, pay a CIVIL PENALTY in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00).
 - b. If the Respondent fails to comply with Part XX, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XX, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of default.
 - d. If the Respondent fails to comply with Part XX, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00), payable within 30 days of default.

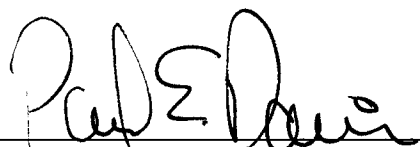
- e. If the Respondent fails to comply with Part XX, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of default.
 - f. If the Respondent fails to comply with Part XX, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00), payable within 30 days of default.
 - g. If the Respondent fails to comply with Part XX, item 6 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of default.
8. The Respondent shall pay DAMAGES to the division in the amount of FOUR HUNDRED SIXTY DOLLARS AND NINE CENTS (\$460.09) within 30 days of receipt of this Order and Assessment.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the commissioner of the Tennessee Department of Environment and Conservation on this 25th day of June 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115 allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines.

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal, which is filed, should be sent to Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments

of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.